



California Regional Water Quality Control Board

San Diego Region



Winston Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb9/>
9174 Sky Park Court, Suite 100, San Diego, California 92123
Phone (858) 467-2952 • FAX (858) 571-6972

Gray Davis
Governor

October 24, 2002

CERTIFIED MAIL RETURN RECEIPT REQUESTED
7000 1530 0002 7651 2162

Mr. Keith Lewinger
General Manager
Fallbrook Public Utility District
990 East Mission Road
P.O. Box 2290
Fallbrook, California 92088-2290

File No. 01-0115.01

Dear Mr. Lewinger:

**COMPLAINT NO. R9-2002-0308 FOR ADMINISTRATIVE CIVIL LIABILITY FOR
MANDATORY MINIMUM PENALTIES UNDER CWC § 13385 FOR VIOLATIONS OF
ORDER NO. R9-2000-0012 AT THE FALLBROOK PUBLIC UTILITY DISTRICT
WASTEWATER TREATMENT PLANT NO. 1**

Enclosed find Complaint No. R9-2002-0308, Administrative Civil Liability with Mandatory Minimum Penalties, for the amount of \$87,000 for violation of effluent limits established by Order No. R9-2000-0012, NPDES No. CA0108031, *Waste Discharge Requirements for the Fallbrook Public Utility District, Wastewater Treatment Plant No. 1, Discharge to the Pacific Ocean via the Ocean Outfall.*

Be aware that if Fallbrook PUD intends to waive its right to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board), you or an authorized agent must sign and return the enclosed waiver form with a cashier's check for the amount of civil liability indicated in the Complaint by 5:00 p.m., Wednesday, November 20, 2002. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$87,000 as set forth in the Complaint.

If Fallbrook PUD does not elect to waive its right to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on December 11, 2002, at the Regional Board Meeting Room, 9174 Sky Park Court, Suite 100, San Diego, California. The meeting is scheduled to begin at 9:00 a.m. In order for the Regional Board to fully consider any argument on your behalf, you should submit twenty copies of all documents, including exhibits, you intend to provide to the Regional Board by 5:00 p.m. Wednesday November 27, 2002 as indicated in the enclosed *Submittal of Written Information Procedures*. Copies of material submitted will be forwarded to the Regional Board. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

Mr. Keith Lewinger
General Manager
Fallbrook Public Utility District

- 2 -

October 24, 2002

Please contact Frank Melbourn (858) 467-2973 or via email at melbf@rb9.swrcb.ca.gov if you have any questions concerning this matter.

Respectfully,



JOHN H. ROBERTUS
Executive Officer

JHR:mpm:mja:ftm

- Attachments:
1. ACL Complaint No. R9-2002-0308
 2. Waiver of Hearing Form
 3. Submittal of Written Information Procedures
 4. Hearing Procedures

Copy with attachments to: Atty. John Richards, SWRCB

WDID No. 9 000000115

1	04/16/2001	CBOD any time max	114787
2	04/16/2001	CBOD any time max	114788
3	04/16/2001	TSS any time max	114789
4	04/16/2001	TSS any time max	114790
5	04/16/2001	TSS 7-day average	114812
6	04/16/2001	CBOD 7-day avg.	114792
7	04/16/2001	TSS 7-day average	114799
8	04/17/2001	TSS 7-day average	114813
9	04/17/2001	CBOD 7-day avg.	114793
10	04/17/2001	TSS 7-day average	114800
11	04/18/2001	TSS 7-day average	114814
12	04/18/2001	TSS 7-day average	114801
13	04/18/2001	CBOD 7-day avg.	114794
14	04/19/2001	TSS 7-day average	114815
15	04/19/2001	CBOD 7-day avg.	114795
16	04/19/2001	TSS 7-day average	114802
17	04/20/2001	TSS 7-day average	114816
18	04/20/2001	CBOD 7-day avg.	114796
19	04/20/2001	TSS 7-day average	114803
20	04/21/2001	TSS 7-day average	114817
21	04/21/2001	TSS 7-day average	114805
22	04/21/2001	CBOD 7-day avg.	114797
23	04/22/2001	TSS 7-day average	114818
24	04/22/2001	TSS 7-day average	114807
25	04/22/2001	CBOD 7-day avg.	114798
26	05/13/2001	TSS 7-day average	114819
27	09/24/2001	TSS any time max	114754
28	09/24/2001	TSS any time max	114755
29	06/03/2002	TSS any time max	118668
30	06/04/2002	CBOD any time max	118669
31	06/04/2002	TSS any time max	118667
E	10/23/2002	MPC	59642

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN THE MATTER OF:

**FALLBROOK PUBLIC UTILITY DISTRICT
WASTEWATER TREATMENT PLANT NO. 1
SAN DIEGO COUNTY, CALIFORNIA
WDID NO. 9 000000115**

**NONCOMPLIANCE WITH ORDER NO.
R9-2000-0012, NPDES NO. CA0108031,
DISCHARGE TO THE PACIFIC OCEAN VIA
THE OCEANSIDE OCEAN OUTFALL**

)
)
) COMPLAINT NO. R9-2002-0308
) FOR
) ADMINISTRATIVE CIVIL LIABILITY
) WITH
) MANDATORY MINIMUM PENALTIES
)
)
) OCTOBER 24, 2002
)
)

FALLBROOK PUBLIC UTILITY DISTRICT, IS HEREBY GIVEN NOTICE THAT:

1. Fallbrook Public Utility District (Fallbrook PUD) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to the Porter-Cologne Water Quality Control Act, Water Code section 13385 et seq.
2. A public hearing on this matter is tentatively scheduled before the Regional Board on December 11, 2002, at the Regional Board office, 9174 Sky Park Court, San Diego, California. The meeting will begin at 9:00 a.m. At the hearing, Fallbrook PUD will have the opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. Additional notice of this public hearing and the hearing procedures will be provided to Fallbrook PUD prior to the hearing date with the agenda for the Regional Board meeting.
3. At the hearing, the Regional Board will determine the validity of the allegations contained herein and, if the allegations are found to be true, will consider whether to assess civil liability in the amount proposed by this Complaint, or in some other amount.

ALLEGATIONS

4. During the period from April 2001 through June 2002, Fallbrook PUD violated Order No. R9-2000-0012, NPDES NO. CA0108031, *Waste Discharge Requirements for the Fallbrook Public Utility District, Wastewater Treatment Plant No. 1, Discharge to the Pacific Ocean via the Ocean Outfall*. These violations are due to effluent limit exceedances of Total Suspended Solids (TSS) and Carbonaceous Biochemical Oxygen Demand (CBOD₅) as reported in the Discharger Self-Monitoring Reports during this time period.

5. The following facts are the basis for the alleged violations in this matter:

Fallbrook PUD is authorized pursuant to Order No. R9-2000-0012 to discharge an average dry weather flowrate of 2.7 million gallons per day (MGD) of tertiary treated wastewater to the Pacific Ocean through the Oceanside Ocean Outfall. Treatment Plant No. 1 is located at 1425 South Alturas Street in Fallbrook, adjacent to Fallbrook Creek. Order No. R9-2000-0012 was adopted on February 9, 2000. Table 1 (attached) summarizes the discharge limitations set forth in Order No. R9-2000-0012 and the violations by Fallbrook PUD during the period in question.

6. Under Water Code section 13385(h) and (i), the amount of the mandatory minimum penalty that must be assessed is \$87,000, as determined by the following:

- a. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for the first serious violation and each additional serious violation in any period of six consecutive months, or, in lieu of the penalty, require the discharger to spend an equal amount for a supplemental environmental project, or to develop a pollution prevention plan.

Seventeen serious violations are assessed \$3,000 per violation, giving a subtotal of \$51,000 for serious violations.

- b. Water Code Section 13385(i)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six-month period:

- Exceeds a waste discharge requirement effluent limitation.
- Fails to file a report pursuant to Water Code Section 13260.
- Files an incomplete report pursuant to Water Code Section 13260.
- Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

Fourteen chronic violations, twelve of which are assessed \$3,000 per violation, giving a subtotal of \$36,000 for chronic violations.

- c. The total of thirty-one violations (seventeen serious and fourteen chronic) are assessed \$3,000 per violation, except for the last two chronic violations, giving a total mandatory minimum penalty of \$87,000 for these violations.

PROPOSED CIVIL LIABILITY

7. Pursuant to Section 13385 (h) and (i) of the Water Code, mandatory minimum penalty should be imposed on Fallbrook PUD by the Regional Board in the amount of \$87,000, the amount of the mandatory minimum penalty, for the above violations.

Dated this 24th day of October 2002



JOHN H. ROBERTUS
Executive Officer

Table 1.
Violation Summary for Fallbrook PUD, Plant No. 1 (April 2001 through June 2002)

Date	Violation	Viol. ID No.	Permit Limit	Report Value	Ratio Report to Permit	Pollutant Category	Chronic or Serious	Penalty
1 04/16/2001	CBOD any time max	114787	45 mg/l	220 mg/l	4.9	CAT1	Serious	\$3,000
2 04/16/2001	CBOD any time max	114788	730 lbs/day	2766.3 lbs/day	3.8	CAT1	Serious	\$3,000
3 04/16/2001	TSS any time max	114789	50 mg/l	430 mg/l	8.6	CAT1	Serious	\$3,000
4 04/16/2001	TSS any time max	114790	810 lbs/day	5406.9 lbs/day	6.7	CAT1	Serious	\$3,000
5 04/16/2001	TSS 7-day average	114812	45 mg/l	72.8 mg/l	1.6	CAT1	Serious	\$3,000
6 04/16/2001	CBOD 7-day avg.	114792	40 mg/l	44.6 mg/l	1.1	CAT1	Chronic	\$3,000
7 04/16/2001	TSS 7-day average	114799	730 lbs/day	918.7 lbs/day	1.3	CAT1	Chronic	\$3,000
8 04/17/2001	TSS 7-day average	114813	45 mg/l	78.9 mg/l	1.8	CAT1	Serious	\$3,000
9 04/17/2001	CBOD 7-day avg.	114793	40 mg/l	45.1 mg/l	1.1	CAT1	Chronic	\$3,000
10 04/17/2001	TSS 7-day average	114800	730 lbs/day	989.0 lbs/day	1.3	CAT1	Chronic	\$3,000
11 04/18/2001	TSS 7-day average	114814	45 mg/l	82 mg/l	1.8	CAT1	Serious	\$3,000
12 04/18/2001	TSS 7-day average	114801	730 lbs/day	1024.7 lbs/day	1.4	CAT1	Serious	\$3,000
13 04/18/2001	CBOD 7-day avg.	114794	40 mg/l	45.9 mg/l	1.1	CAT1	Chronic	\$3,000
14 04/19/2001	TSS 7-day average	114815	45 mg/l	81 mg/l	1.8	CAT1	Serious	\$3,000
15 04/19/2001	CBOD 7-day avg.	114795	40 mg/l	44.3 mg/l	1.1	CAT1	Chronic	\$3,000
16 04/19/2001	TSS 7-day average	114802	730 lbs/day	1007.0 lbs/day	1.3	CAT1	Chronic	\$3,000
17 04/20/2001	TSS 7-day average	114816	45 mg/l	79 mg/l	1.8	CAT1	Serious	\$3,000
18 04/20/2001	CBOD 7-day avg.	114796	40 mg/l	42.9 mg/l	1.1	CAT1	Chronic	\$3,000
19 04/20/2001	TSS 7-day average	114803	730 lbs/day	990 lbs/day	1.3	CAT1	Chronic	\$3,000
20 04/21/2001	TSS 7-day average	114817	45 mg/l	90 mg/l	2.0	CAT1	Serious	\$3,000

Table 1.
Violation Summary for Fallbrook PUD, Plant No. 1 (April 2001 through June 2002)

Date	Violation	Viol. ID No.	Permit Limit	Report Value	Ratio Report to Permit	Pollutant Category	Chronic or Serious	Penalty
21 04/21/2001	TSS 7-day average	114805	730 lbs/day	1113.4 lbs/day	1.5	CAT1	Serious	\$3,000
22 04/21/2001	CBOD 7-day avg.	114797	40 mg/l	45.4 mg/l	1.1	CAT1	Chronic	\$3,000
23 04/22/2001	TSS 7-day average	114818	45 mg/l	88 mg/l	2.0	CAT1	Serious	\$3,000
24 04/22/2001	TSS 7-day average	114807	730 lbs/day	1098.4 lbs/day	1.5	CAT1	Serious	\$3,000
25 04/22/2001	CBOD 7-day avg.	114798	40 mg/l	43.5 mg/l	1.1	CAT1	Chronic	\$3,000
26 05/13/2001	TSS 7-day average	114819	45 mg/l	66 mg/l	1.5	CAT1	Serious	\$3,000
27 09/24/2001	TSS any time max	114754	50 mg/l	73 mg/l	1.5	CAT1	Serious	\$3,000
28 09/24/2001	TSS any time max	114755	810 lbs/day	947 lbs/day	1.2	CAT1	Chronic	\$3,000
29 06/03/2002	TSS any time max	118668	50 mg/l	60.4 mg/l	1.2	CAT1	Chronic	\$0
30 06/04/2002	CBOD any time max	118669	45 mg/l	51.7 mg/l	1.1	CAT1	Chronic	\$0
31 06/04/2002	TSS any time max	118667	50 mg/l	79.0 mg/l	1.6	CAT1	Serious	\$3,000
Total \$87,000								



California Regional Water Quality Control Board

San Diego Region

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Phone (858) 467-2952 FAX (858) 571-6972



WAIVER OF RIGHT TO A HEARING

Keith Lewinger
General Manager
Fallbrook Public Utility District
990 East Mission Road
P.O. Box 2290
Fallbrook, CA 92088-2290

Administrative Civil Liability
with
Mandatory Minimum Penalties
Complaint No. R9-2002-0308
\$87,000
October 24, 2002

WDID No. 9 000000115
Plant No. 1, Oceanside Outfall

By signing below, I agree to waive Fallbrook Public Utility District's right to a hearing before the California Regional Water Quality Control Board, San Diego Region with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am authorized to give up Fallbrook Public Utility District's right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Signature

Title

Date

Send this signed form to:

John H. Robertus, Executive Officer
C/O Compliance Assurance Unit
California Regional Water Quality Control Board – San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

S:\Compliance Assurance\Enforcement Orders\MMPs\Fallbrook PUD\Public Hearing Waiver.doc

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

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Gray Davis
Governor

SUBMITTAL OF WRITTEN INFORMATION PROCEDURES AND OTHER IMPORTANT DATES FOR THE DECEMBER 11, 2002 REGIONAL BOARD MEETING

The Regional Board requests that all lengthy comments be submitted in writing in advance of the meeting date. To ensure that the Regional Board has the opportunity to fully study and consider written material, comments should be received in the Regional Board's office no later than 5:00 p.m. on **Wednesday, November 27, 2002**, and should indicate the agenda item to which it is applicable.

If the submitted written material is more than 5 pages or contains foldouts, color graphics, maps, etc., **20 copies** must be submitted for distribution to the Regional Board members and staff. Written material submitted after 5:00 p.m. on **Wednesday, December 4, 2002** will not be provided to the Regional Board members and will not be considered by the Regional Board. Comments on this agenda item will be accepted by e-mail subject to the same conditions set forth for other written submissions as long as the total submittal (including attachments) does not exceed five printed pages in length. E-mail should be submitted to rbagenda@rb9.swrcb.ca.gov.

Pursuant to Title 23, California Code of Regulations, Section 648.2, the Regional Board may refuse to admit written testimony into evidence if it is not submitted to the Regional Board in a timely manner, unless the proponent can demonstrate why he or she was unable to submit the material on time or that compliance with the deadline would create an unreasonable hardship.

HEARING PROCEDURES

The hearing procedures that will be followed by the Regional Board are enclosed for your review. Hearings before the Regional Board are normally conducted using procedures that do not include cross-examination. Parties requesting use of more formal procedures must do so in accord with the directions in the hearing procedures. Any such request, together with supporting material, must be received in the Regional Board's office no later than 5:00 p.m. on **Wednesday, November 27, 2002**.

WAIVER OF HEARING

You may waive your right to a hearing. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount set forth in the Complaint. If you wish to waive the right to a hearing, an authorized agent must sign and return the enclosed waiver form by 5:00 P.M., Wednesday, November 20, 2002.

California Environmental Protection Agency

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C. HEARING PROCEDURES

Hearings before the San Diego Regional Board are not conducted pursuant to Chapter 5 of the California Administrative Procedure Act, commencing with Section 11500 of the Government Code. Regulations governing the procedures of the regional boards are codified in Chapter 1.5, commencing with Section 647, of the State Water Resources Control Board regulations in Division 3 of Title 23 of the California Code of Regulations.

Testimony and comments presented at hearings need not conform to the technical rules of evidence provided that the testimony and comments are reasonably relevant to the issues before the Board. Testimony or comments that are not reasonably relevant, or that are repetitious, will be excluded. Cross-examination may be allowed by the Chairman as necessary for the Board to evaluate the credibility of factual evidence or the opinions of experts. Video taped testimony by witnesses who are not present at the hearing will not be accepted unless such testimony was subject to cross-examination by all designated parties¹.

Pursuant to Government Code § 11445.20, the Board will use an informal hearing procedure, which does not include the right of cross-examination. Failure to make a timely objection to the use of an informal procedure, in accord with the directions below, will constitute consent to the informal hearing (See Title 23, California Code of Regulations, Section 648.7). Even with a timely objection, an informal procedure may be used under the circumstances identified in Government Code § 11445.20 (a) (b) or (d).

For formal hearings, designated parties must submit witness testimony prior to the hearing date. During the formal hearing, witnesses will be allowed a limited time to orally summarize the pertinent points of their testimony. Designated parties requesting a formal hearing must submit 20 copies of the following information to the Regional Board. This information must be received in the Regional Board's Office by the date indicated on the first page of this Agenda Notice for the submission of a request for formal hearing:

- Witness testimony;
- The name of each proposed witness and the order in which witnesses will be called;
- A description/summary of what each witness' testimony is intended to prove; and,
- Identification of material factual issues in the dispute.

When a hearing is conducted using formal procedures, participants will be determined to be either "designated parties" or other "interested persons". Only designated parties will have the right to cross-examine witnesses. Interested persons do not have a right to cross-examination, but may ask the Regional Board to clarify testimony.

Designated parties automatically include the Regional Board and any person to whom an order is addressed (i.e., the Discharger(s)). All other persons wishing to testify or provide comments at a formal hearing are interested persons. An interested person may request status as a designated party for purposes of the formal hearing. A request must be received in the Regional Board's Office by the date indicated on the first page of this Agenda Notice for the submission of a request for formal hearing. The request must explain the

¹ This does not preclude the use of videotape to present graphic images, provided that the person who took the videotape is available for questioning; this is intended to apply to spoken testimony of witnesses who are not available for cross-examination at the hearing.

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basis for status as a designated party and, in particular, how the person is directly affected by the possible actions of the Regional Board.

For any hearing (formal or informal) the Chair will allocate time for each party to present testimony and comments and to question other parties if appropriate. Interested parties will generally be given 3 minutes for their comments. Where speakers can be grouped by affiliation or interest, such groups will be asked to select a spokesperson. The Chair may allocate additional time for rebuttal or for a closing statement. Time may be limited due to the number of persons wishing to speak on an item, or the number of items on the Board's agenda, or for other reasons.

All persons testifying must state their name, address, affiliation, and whether they have taken the oath before testifying. The order of testimony for hearings generally will be as follows, unless modified by the Regional Board Chair:

- Testimony* of Regional Board staff
- Testimony* of discharger
- Testimony* of other designated parties
- Testimony* of interested persons
- Closing statement by designated parties other than discharger
- Closing statement by discharger
- Closing statement by staff
- Recommendation by Executive Officer (as appropriate)
- Close public hearing
- Deliberation and voting by Regional Board

*includes cross examination if formal hearing

Closing statements shall be for the purpose of summarization and rebuttal, and are not to be used to introduce new evidence or testimony, or to restate direct testimony. After considering evidence, testimony, and comments, the Regional Board may choose to adopt an order regarding a proposed agenda item. All Regional Board files, exhibits, and agenda material pertaining to items on the agenda are made a part of the record. Persons wishing to introduce item exhibits (i.e., maps, charts, photographs) must leave them with the Regional Board's Executive Assistant and must provide sufficient copies for distribution to the Regional Board, designated parties, and interested persons. Photographs or slides of large exhibits are acceptable.

